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In re Application of	:	
HARDER et al.	:	DECISION ON
Application No.: 10/597,099	:	
PCT No.: PCT/EP2005/001167	:	PAPERS
Int. Filing Date: 04 February 2005	:	
Priority Date: 06 February 2004	:	UNDER 37 CFR 1.42
Attorney's Docket No.: 149459.00003	:	
For: IMPLANT FOR RELEASING AN ACTIVE	:	
SUBSTANCE INTO A VESSEL THROUGH WHICH	:	
A BODY MEDIUM FLOWS	:	

This is a decision on the renewed petition under 37 CFR 1.42 filed by applicants on 30 July 2007.

### **BACKGROUND**

On 04 February 2005, applicants filed international application PCT/EP2005/001167 which claimed a priority date of 06 February 2004 and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 18 August 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 07 August 2006 (06 August 2006 being a Sunday).

On 11 July 2006, applicants filed for entry into the national stage in the United States accompanied by, *inter alia*, the basic national fee, a substitute specification, a marked-up copy of the substitute specification, and a declaration of inventors. The indication in this declaration that inventor Bernd Hueblein is deceased was treated as a request for status under 37 CFR 1.42.

On 29 November 2006, applicants filed a "PETITION FOR CORRECTION OF INVENTORSHIP OF PATENT APPLICATION UNDER 35 U.S.C. 116 and 37 CFR 1.48(a)", which was properly treated as a petition under 37 CFR 1.497(d). The submission was also accompanied by a declaration of inventors. The indication in this declaration that inventor Bernd Hueblein is deceased was also treated as a request for status under 37 CFR 1.42.

On 02 April 2007, a decision was mailed refusing applicants' petition under 37 CFR 1.42 because the declaration filed 29 November 2006 did not include the full name and citizenship of the deceased inventor. The petition under 37 CFR 1.497(d) was dismissed as moot. The decision also indicated that the declaration filed 29 November 2006 was an improper composite declaration and that an English translation of the international application as filed had not yet been provided.

On 26 April 2007, applicants filed a submission which included, *inter alia*, two declarations of inventors, an English translation of the international application as filed, and the processing fee under 37 CFR 1.492(i) for providing the translation later than thirty months from the priority date.

On 10 May 2007, a decision was mailed refusing applicants' petition under 37 CFR 1.42 because the declarations filed 26 April 2007 had been amended after signing.

On 30 July 2007, applicants filed the instant renewed petition under 37 CFR 1.42 which was accompanied by three declarations of inventors.

### DISCUSSION

The declarations signed by Claus Harder, Rohde Roland, Erhard Flach, Wolfgang Geistert, Gernot Kolberg, and Heinz Muller filed 26 April 2007 still contain amendments made after the declarations were signed by them. These declarations were amended to include the residence, mailing address, and citizenship of deceased inventor Bernd Heublein. MPEP § 602.01 states that "the wording of an oath or declaration cannot be amended, altered or changed in any manner after it has been signed." Accordingly, the declarations are improper.

Although proper declarations signed by the legal representatives of deceased inventor Bernd Heublein have been provided, proper declarations from the other inventors are still required. Proper declarations could include the original unamended declarations signed by Claus Harder, Rohde Roland, Erhard Flach, Wolfgang Geistert, Gernot Kolberg, and Heinz Muller.

Reference is made in the renewed petition to a telephone conference with the undersigned. It does not appear that it was made clear in the telephone conference that proper declarations signed by the non-deceased inventors were still required. Any inconvenience is regretted.

### CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is **REFUSED**.

Applicant is required to submit a declaration in compliance with 37 CFR 1.497 and 1.42 within a time period of **TWO (2) MONTHS** from the mail date of this Decision. **THIS PERIOD**

FOR RESPONSE MAY BE EXTENDED UNDER 37 CFR 1.136(a). FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT. Any request for reconsideration of this decision should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42."

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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